

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 91-648-C - ORDER NO. 92-153 ✓
MARCH 3, 1992

IN RE: Application of Dataphon SC Limited)	
Partnership for a Certificate of)	
Public Convenience and Necessity to)	ORDER GRANTING
Construct and Operate a New Domestic)	CERTIFICATE OF
Public Cellular Radio Telecommuni-)	PUBLIC CONVENIENCE
cations System for Service to the)	AND NECESSITY
Public in South Carolina Rural)	
Service Area No. 4.)	

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of an application of Dataphon SC Limited Partnership (the Company) requesting issuance of a Certificate of Public Convenience and Necessity to construct and operate a cellular radio telecommunications system and for the establishment of rates and charges to provide a new domestic public cellular radio telecommunications service to the public in the counties of Kershaw, Chesterfield, Darlington, Marlboro, and Dillon, South Carolina, which is Rural Service Area (RSA) No. 4.

The Company's application was filed pursuant to S.C. Code Ann. §58-11-100 (1976), as amended, and/or R.103-34 of the Commission's Rules of Practice and Procedure. By letter dated November 26, 1991, the Commission's Executive Director instructed the Company to publish a prepared Notice of Filing, in newspapers of general circulation, in the affected areas, one time, and to

provide the Commission's Executive Director with proof of publication. The Notice of Filing indicated the nature of the Company's application and advised all interested parties desiring participation in the scheduled proceeding of the manner and time in which to file the appropriate pleadings.

A Petition to Intervene was filed by the Consumer Advocate but was subsequently withdrawn. By Order No. 91-1080, issued in the instant Docket on December 6, 1991, the Company was allowed to proceed with the construction of its cellular telephone system during the pendency of its application. The Company proceeded at its own risk by beginning construction prior to any Commission approval, and the Commission was not bound to act favorably upon the pending application.

The Company prefiled the verified testimony of Randy H. Jenkins. Pursuant to the testimony of Mr. Jenkins and the record in this case, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. The Company is a Wisconsin Limited Partnership. The General Partner is Dataphon Cellular Company of South Carolina, a Delaware Corporation. Presently, pursuant to Order No. 91-1080, the Company is proceeding with the construction of its cellular system pending the Commission's consideration of this request.

2. The FCC has decided that two cellular carriers, a wireline carrier and a non-wireline carrier, will service the designated RSA's throughout the United States.

3. The absence of a non-wireline carrier could adversely affect South Carolina cellular customers. The absence of competition would cause cellular customers in both RSA No. 4 and the surrounding geographic areas to suffer.

4. If a wireline carrier was allowed to develop in a market unhindered by the competitive pressure of a non-wireline carrier, it could easily obtain market power in a short period of time. The presence of this market power could inhibit robust growth of a non-wireline carrier, and might adversely affect both the price and quality of the service available to customers located in RSA No. 4.

5. The Company is prepared to offer cellular service in RSA No. 4. The Commission finds that the provision of service by the Company to the area will preserve the FCC requirement of a two carrier system, thus promoting competition.

6. On December 23, 1991, United States Cellular Corporation (USCC) entered into a Management Agreement with the Company to manage the development of the Company's cellular mobile radio telephone system for RSA No. 4.

7. USCC and the Company have entered into a Purchase Agreement pursuant to which USCC will purchase the FCC non-wireline cellular construction permit in connection with RSA No. 4 and related assets of the Company.

8. The FCC has already approved the application for authority at the Federal level for Dataphon SC Cellular Partnership and an application to transfer the Operating Permit to

the Company is pending and approval is expected.

9. The Company is fit, willing, and able to provide cellular service to RSA No. 4, since it has demonstrated the fitness, willingness, and ability to finance and operate the cellular system proposed for Kershaw, Chesterfield, Darlington, Marlboro, and Dillon Counties.

10. The Certificate of Public Convenience and Necessity as requested by the Company should be granted. The Company should be allowed to apply its tariff which was filed with its application to wholesale service rendered in RSA No. 4.

11. That retailers of the services offered by the Company do not fall within the purview of the statute and therefore are not subject to the jurisdiction of the Commission.

12. That while the Commission is conscious of the need for cellular companies to adjust wholesale rates and charges timely to reflect the forces of economic competition, the Commission is not convinced that rate and tariff adjustments below the approved maximum levels should be accomplished without notice to the Commission and to the public. The Commission herein adopts a rate design for the Company which includes only a maximum rate level with the flexibility for downward adjustment has been previously adopted by this Commission. IN RE: Application of GTE Sprint Communications Corporation, et al. Order No. 84-662, issued in Docket No. 84-10-C on August, 2, 1984. The Company will incorporate provisions for filing of proposed rate changes and publication of notice of such changes two (2) weeks prior to the

effective date of such changes, and affidavits of publications must be filed with the Commission. Furthermore, the Commission considers that any proposed increase in the maximum rate levels reflected in the tariffs of the Company, which should be applicable to the carrier's general body of subscribers, would constitute a general rate making proceeding which would be treated in accordance with the notice and hearing provisions of Section 58-11-70 of the South Carolina Code Annotated (Law Co-op 1976 and 1990 Cum. Supp.).

13. That the Company is hereby ordered to file maximum wholesale tariffs and a wholesale price list in a loose leaf binder to reflect the findings herein within thirty days of the date of this Order.

IT IS THEREFORE ORDERED:

1. That the application of Dataphon SC Limited Partnership for a Certificate of Public Convenience and Necessity to provide domestic public cellular radio telecommunications service in RSA No. 4 is hereby granted.

2. That the Company shall apply its proposed tariff to wholesale service that it shall render in RSA No. 4.

3. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:


Executive Director

(SEAL)